IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION NO. 418 (MS) OF 2006

M/s Abnsah Lal Harish Kumar through its partner, Harish Banga, Rudrapur, District-Udham Singh nagar.

.....Petitioner.

Versus

Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Sub-Regioinal Office, Abdula Building, Dist-Udham Singh Nagar. ....Respondent.

Sri. S.S. Chauhan, Advocate for the petitioner.
Sri Ashok Agarwal, Advocate for the respondent.

Dated: 25.04.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 21st May, 2004 as well as the order dated 10.03.2006 (Annexures 1 and 2 to this Writ Petition) passed by the Assistant Commissioner Provident Fund Employees Provident Fund Organization, Sub Regional Office Abdulla Building, Bareilly Road, Haldwani, Dist-Nainital.

Briefly stated, the proceedings under Section 7-A of the Employees Provident Fund and Misc. Provisions Act, 1952 were initiated by the Assistant Provident Fund Commissioner, Haldwani. During the proceedings, it appears that the notices were issued to the petitioner on 10th March, 2006 calling him to appear and to pay the amount of arrears amounting to Rs. 81,293/-. It appears, according to the case of the petitioner that the notices could not be served upon thue petitioner as such ex parte proceedings were initiated against the petitioner

and by order dated 21st May, 2004, it has been observed by the Assistant Provident Fund Commissioner, Haldwani that the occasion has arisen for me to determine the quantum of dues payable by the petitioner as required under Section 7-A of the Act a registered notice No. 5548/UA/11103 dated 29.11.2003 was sent to the employer calling upon them to represent, but inspite of the notice sent to the petitioner none appears has appeared on behalf of the petitioner.

Immediately after the aforesaid order dated 21st May, 2004 when the petitioner came to know, he has filed a review petition on 1st July, 2005 stating the cause of non-appearance by stating that during that period, he had closed his factory completely and as no person was available, therefore, no information was received by him.

The grievance of the petitioner is that the said review petition has not yet been disposed of, however, the recovery has been initiated against the petitioner. The petitioner has also filed an application for setting aside the ex parte order dated 21st May, 2004 and the said application is pending.

A perusal of the provision of Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 provides that the review has been provided under Section 7-A (4) of the Act, which provides where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order, said Clause (4) is quoted below:-

"[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order apply to the officer for setting aside such order and if he satisfies the

officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely n the ground that there has been an irregularity in the service of the show cause notice of the officer is satisfied that the employer had notice of the date of hearting and had sufficient time to appear before the officer.

Explanation.- Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order."

The apex Court in the case of ***Ram Nath Sao @ Ram Nath Sahu and Others. Vs. Gobardhan Sao and others 2002 Supreme Court & Full Bench Rent Case, Page 440*** has held as under:-

"*The expression 'sufficient' cause' within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Act') Order XXII, Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') as well as similar other provisions and the ambit of exercise of powers there under have been subject matter of consideration before this Court on numerous occasions. In the case of State of West Bangal v. The Administrator, Howrah Municipality and others (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial*

justice when no negligence or inaction or want of bona fide is imputable to a party."

The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In ***N. Balakrishnan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,*** It has been held that law of limitation is founded in public policy on '*the maxim of interest reipublicae up sit finis litium*' i.e. fal the general welfare, it has been held as under:-

> *" The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause".*
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> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the*

wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promotly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation."

In view of the aforesaid decisions of the Apex Court, the matter is sent back to the Assistant Provident Fund Commissioner, who shall decide the same afresh after hearing the petitioner within a period of three months. However,

liberty is given to the petitioner to adduce the evidence before the Assistant Provident Fund Commissioner.

A writ of certiorari is issued quashing the order dated 21.05.2004 and the recovery in pursuance of the said order is stayed.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

25.04.2006
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